

1 INTRODUCTION AND SUMMARY

The California High-Speed Rail Authority (Authority) is circulating this Revised Draft Program Environmental Impact Report (EIR) Material to comply with the final judgment in the *Town of Atherton* litigation on the 2008 *Bay Area to Central Valley High-Speed Train (HST) Final Program Environmental Impact Report/Environmental Impact Statement (EIR/EIS)*. This chapter describes the basis for circulating the Revised Draft Program EIR Material, the contents of this document, the public comment period, how the Authority will use this document in its decision making, and the relationship of this document to the Authority's project-level EIRs.

1.1 Basis for Circulating Bay Area to Central Valley High-Speed Train Revised Draft Program EIR Material

In July 2008, the Authority certified the Final Bay Area to Central Valley HST Program EIR¹ (2008 Final Program EIR) for its compliance with the California Environmental Quality Act (CEQA). The Authority then selected the Pacheco Pass Network Alternative with San Francisco and San Jose Termini, preferred alignments, and preferred station locations for further study in project EIRs. The Authority also adopted a mitigation monitoring and reporting program and a statement of overriding considerations. The Authority took these actions in a duly noticed public meeting by adoption of Authority Resolution No. 08-01.

On August 8, 2008, the Town of Atherton, the Planning and Conservation League, the City of Menlo Park, the Transportation Solutions Defense and Education Fund, the California Rail Foundation, and the Bay Rail Alliance filed a lawsuit in the Superior Court for Sacramento County challenging the Authority's actions as being in violation of CEQA. (*Town of Atherton, et al., v. California High-Speed Rail Authority*, Sacramento Superior Court No. 34-2008-80000022.) Following extensive briefing in the case and a hearing on May 29, 2009, Judge Michael Kenny issued a ruling on August 26, 2009. A copy of the ruling is included as Appendix A. In that ruling, the Court concluded that the Authority's 2008 Final Program EIR failed to comply with CEQA in the following respects:

- **ADEQUACY OF PROJECT DESCRIPTION:** "The Court concludes that the description of the alignment of HSR tracks between San Jose and Gilroy was inadequate even for a programmatic EIR. The lack of specificity in turn results in an inadequate discussion of the impacts of the Pacheco alignment on surrounding businesses and residences which may be displaced, construction impacts on the Monterey Highway, and impacts on Union Pacific's use of its right-of-way and spurs and consequently its freight operations." (Ruling, p. 6.)
- **RECIRCULATION AFTER UNION PACIFIC RAILROAD ANNOUNCED ITS UNWILLINGNESS TO ALLOW USE OF ITS RIGHT-OF-WAY:** "[T]his Court concludes that various drawings, maps and photographs within the administrative record strongly indicate that [the Pacheco alignment is dependent upon the use of Union Pacific's right-of-way.] The record further indicates that if the Union Pacific right-of-way is not available, there may not be sufficient space for the right-of-way needed for the HST without either impacting the Monterey Highway or without the acquisition of additional amounts of residential and commercial property.

¹ The May 2008 Final Bay Area to Central Valley High-Speed Train Program Environmental Impact Report was certified by the California High-Speed Rail Authority in July 2008.

These are significant impacts which were sufficient to trigger recirculation of the FPEIR.” (Ruling, pp. 19-20.)

- **LAND USE IMPACTS ALONG SAN FRANCISCO PENINSULA:** “As discussed elsewhere in this Court’s ruling, Union Pacific has stated it is unwilling to allow its right-of-way to be used for the project. The need for acquiring additional property is a related issue that will be required to be analyzed in connection with further analysis of the impact of Union Pacific’s denial of use of its right-of-way.” (Ruling, pp. 15-16.)

The Court also held the Authority’s CEQA finding on vibration impacts was not supported by substantial evidence. (Ruling, p. 14.) The Court rejected all other challenges to the content of the 2008 Final Program EIR raised in the litigation.

A final judgment was entered in the case on November 3, 2009, and the Court issued a peremptory writ of mandate on the same day. The judgment and writ directed the Authority to void its certification of the 2008 Final Program EIR, its approval of the Pacheco Pass Network Alternative, and its related approvals of CEQA findings, mitigation plan, and statement of overriding considerations. The writ also directed the Authority to comply with the judgment and with CEQA prior to taking any further action to certify the 2008 Final Program EIR.

On December 3, 2009, the Authority approved resolution HSRA 10-012 as the first step in complying with the court judgment and peremptory writ of mandate. This action rescinded the Authority’s certification of the 2008 Final Program EIR and approval of the Pacheco Pass Network Alternative with San Francisco and San Jose Termini, preferred alignments, and preferred station locations for further study. The Authority’s action also directed staff to prepare the necessary revisions to the program EIR and circulate them in accordance with CEQA for public comment.

1.2 Summary of Revised Draft Program EIR Material

The Authority is revising and recirculating portions of its 2008 Final Program EIR to comply with the *Town of Atherton* court judgment described above. The requirement of the judgment to revise and recirculate portions of the program EIR does not require the Authority to start the program EIR process anew. (*Protect the Historic Amador Waterways v. Amador Water Agency* [2004] 116 Cal.App.4th 1099, 1112.) Recirculation of the EIR “may be limited by the scope of the revisions required.” (*Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova* [2007] 40 Cal.4th 412, 449.) Where the scope of revisions is limited to certain chapters or portions of the EIR, a lead agency need only recirculate the chapters or portions that have been modified. (*Id.*; citing CEQA Guidelines, § 15088.5, subd. (c).)

Accordingly, this document contains the following revised information and analysis in response to the *Town of Atherton* court judgment:

Chapter 2: Revised Project Description and Revised Impact Analyses for San Jose to Gilroy

This chapter includes a revised narrative description of the location of HST tracks between San Jose and Gilroy that clarifies that the tracks would be located adjacent to, and not in, Union Pacific Railroad’s (UPRR’s) mainline right-of-way. The description clarifies the relationship of the UPRR right-of-way and the Monterey Highway right-of-way. This chapter also provides revised HST alignment maps and cross sections for San Jose to Gilroy.

Following the revised project description, this section includes a revised discussion of the impacts of the alignment between San Jose and Gilroy on surrounding businesses and residences that may be displaced, construction impacts on the Monterey Highway, impacts on black walnut trees along the Monterey Highway that may qualify as an historical resource, and a clarification of visual impacts. A discussion of the impacts on UPRR's use of its right-of-way and spurs and its freight operations between San Jose and Gilroy is included in Chapter 4 as part of a larger discussion of HST's interface with UPRR freight operations.

Chapter 3: Union Pacific Railroad Statements Refusing to Allow Use of Its Rights-of-Way and the Potential for Needing Additional Property for the HST Alignment Alternatives (new discussion)

This chapter includes new text that summarizes UPRR's May 13, 2008, and July 7, 2008, letters to the Authority and their relationship to the program EIR analysis. This chapter then addresses whether and to what extent UPRR's refusal of the use of its right-of-way may result in the need for acquiring additional residential and commercial property for each alignment alternative. The information in this chapter identifies that some alignment alternatives may result in higher land use and property impacts if UPRR mainline right-of-way is unavailable for the HST system.

Chapter 4: Impacts on Union Pacific Railroad Freight Operations (new discussion)

This chapter includes new text that addresses how the various alignment alternatives may affect UPRR freight operations by virtue of being in or adjacent to UPRR operating rights-of-way. This chapter also addresses the potential for secondary impacts that may occur as a result of efforts to avoid or mitigate impacts on UPRR freight operations, and describes that these secondary impacts and needed mitigation measures to address the secondary impacts will be addressed at the project level. This chapter concludes that accommodating UPRR freight operations is similar across the alternatives.

Chapter 5: Costs and Operations (revisions to Chapter 4 of the 2008 Final Program EIR)

This chapter makes changes to capital cost information included in Chapter 4 of the 2008 Final Program EIR to reflect the revised information in Chapter 2 for the San Jose to Central Valley Corridor. This chapter also includes changes to cost information to reflect the revised information in Chapter 3 for San Francisco to San Jose Corridor property impacts.

Chapter 6: High-Speed Train Network and Alignment Alternatives Comparison (revisions to Chapter 7 of the 2008 Final Program EIR)

This chapter makes the necessary changes to Tables 7.2-12, 7.2-13, 7.2-14, 7.2-15, 7.2-16, 7.2-17, 7.2-18, 7.2-19, 7.2-20, 7.2-21, 7.3-2, and 7.3-5 in Chapter 7 of the 2008 Final Program EIR to reflect the revised information and impact analysis in Chapter 2 for San Jose to Gilroy and the revised information in Chapter 3 for San Francisco to San Jose Corridor property impacts.

Chapter 7: Revised Draft Program EIR Material and Designation of a Preferred Network Alternative for Connecting the Bay Area to the Central Valley

This chapter synthesizes the information contained in this revised material and concludes that the new and revised information does not change the recommendation in the 2008 Final Program EIR that the Pacheco Pass Network Alternative with San Francisco and San Jose Termini is the Preferred Network Alternative.

Chapter 8: Unavoidable Adverse Impacts (revisions to Chapter 9 of the 2008 Final Program EIR)

This chapter discusses how the information contained in this revised material affects the unavoidable and adverse impacts in Chapter 9 of the 2008 Final Program EIR.

This Revised Draft Program EIR Material does not include changes to the vibration analysis in the 2008 Final Program EIR. The court ruling did not find fault with the vibration analysis in the program EIR but rather identified a contradiction between the analysis in the program EIR and the conclusion in the July 2008 CEQA Findings. The Authority will correct this contradiction when it adopts a new set of CEQA findings in conjunction with a new EIR certification and new project approval.

The remainder of the 2008 Final Program EIR either was not challenged in litigation, and is presumed adequate, or was determined by the Court to comply with CEQA

1.3 Public Comment Period for Revised Draft Program EIR Material

This Revised Draft Program EIR Material is being recirculated for public comment in compliance with the court judgment and contains only the additional information necessary for such court compliance. Context for this document is contained in the 2008 Bay Area to Central Valley HST Final Program EIR/EIS. That document can be obtained from the Authority's website at <http://www.cahighspeedrail.ca.gov/library> by clicking on the left-hand tab *Bay Area to Central Valley Final Program EIR/EIS*.

Pursuant to CEQA Guidelines section 15088.5, subdivision (f)(2), the Authority requests that reviewers limit the scope of their comments to the revised materials contained in this document. The Authority is obligated to respond only to those comments received during the circulation period that relate to content of this Revised Draft Program EIR Material.

The Authority will accept public comment on this document for a period of 45 days, commencing on March 11, 2010, and concluding at close of business on April 26, 2010. Comments must be directed to:

Dan Leavitt
California High-Speed Rail Authority
925 L Street, Suite 1425
Sacramento, CA 95814
Attn: Bay Area to Central Valley Revised Draft Program EIR Material Comments

Comments can be received by the Authority through regular U.S. mail, via email with the subject line "Bay Area to Central Valley Revised Draft Program EIR Material Comments" sent to comments@hsr.ca.gov, or by facsimile transmission to (916) 322-0827.

1.4 California High-Speed Rail Authority's Use of Revised Draft Program EIR Material

Following the public comment period on the Revised Draft Program EIR Material, the Authority will prepare and issue a document called Revised Final Program EIR Material that will include responses to the comments received. At a subsequent publicly noticed meeting, the Authority will consider the Revised Draft and Final Program EIR Material, along with the 2008 Final Program EIR, and the record before it, in making the following determinations:

- Certification of the Revised Final Program EIR Material along with the 2008 Final Program EIR for compliance with CEQA.
- Approval of findings of fact, a statement of overriding considerations, and a mitigation monitoring and reporting program in compliance with CEQA.
- Approval of a network alternative, preferred alignments, and preferred station locations for further study in project-level EIRs.

1.5 Relationship of Bay Area to Central Valley High-Speed Train Program EIR Process to Project-Level EIR Processes

The *Town of Atherton* court judgment on the 2008 Final Program EIR did not require the Authority to halt its project-level EIR work for the Bay Area to Central Valley sections, which includes San Francisco to San Jose and San Jose to Merced. The Authority's project-level work is therefore continuing at the same time the Authority is taking the steps needed to bring its program EIR into compliance with CEQA. At the conclusion of the program EIR process, the Authority will make a new decision on a network alternative, preferred alignments, and preferred station locations. The new decision will be carried forward for further study in project-level EIRs.